IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 186 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITTHALBHAI MANGALBHAI PATEL & 2 - Petitioner(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR PV NANAVATI for Petitioner(s) : 1 – 3.
MR VIBHUTI NANAVATI for Petitioner(s) : 1 - 3.
GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/01/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged the order dated 18th November 2003 passed by the Deputy Collector, Land Reforms, Gandhinagar. By

the impugned order, the Deputy Collector was pleased to assume management of land admeasuring 21 Are 86 sq. meters out of survey No.68 belonging to the petitioners for a period of five years in exercise of powers under section 65 of the Bombay Tenancy and Agricultural Lands Act.

2. The petitioners were owners of land bearing survey No.68. The total plot had an area of 12748 sq. meters. The entire land barring 21 Are and 86 sq. meters was granted NA permission in the year 1976. Finding that the remaining portion of the land was not being cultivated, the Deputy Collector issued a notice on 25.7.2003 why the management of the land should not be assumed by the Government. The petitioners replied to the show cause notice and opposed the proposal. The Deputy Collector, however, passed the impugned order dated 18.11.2003. The petitioner had stated before the Deputy Collector that the land was converted into non-agricultural land and necessary land revenue was also paid. The Deputy Collector, however, found that the total area of the plot is 1 hectare 27 Ares and 48 sq. meters out of which land admeasuring 10565.47 sq. meters has been granted non-agricultural permission for building houses. Remaining land i.e. 21 Are and 82 sq.

meters are agricultural lands on which the petitioners are not carrying on any agricultural operations.

3. By way of amendment sought and granted by this Court, the petitioners have produced certain additional evidence. On the basis of the additional material, it is suggested that even the remaining portion of the land which is under dispute was reserved for construction of State High-way, that there was civil litigation between the petitioners and one Anand Cooperative Housing Society in which certain interim orders were passed due to which the petitioners could not cultivate the land in question.

4. The above material was not placed before the Deputy Collector. The Deputy Collector, therefore, cannot be criticized for not basing his order on such material. However, in the interest of justice, it would be appropriate in the facts of the case to permit the petitioners to place the same before the Deputy Collector.

5. For the above purpose, the impugned order is quashed. The proceedings are remanded to the Deputy Collector for fresh consideration and disposal in accordance with law after permitting the petitioner to file further reply and place additional material on record.

6.With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)